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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1459

UNITED STATES OF AMERICA, PETITIONER

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (Pet. App. A) is not reported. The opinion of the court of appeals (Pet. App. B) is reported at 453 F. 2d 360.

JURISDICTION

The judgment of the court of appeals (Pet. App. C) was entered on December 30, 1971. Pursuant to orders extending the time within which to file a petition for a writ of certiorari, the petition was filed on May 8, 1972. Certiorari was granted on October 10, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Pursuant to the Migratory Bird Conservation Act, the United States acquired land in Louisiana for a wildlife refuge by deed and by condemnation. The mineral rights were reserved to the former owners for a ten-year period (subject to extension if certain conditions regarding exploration and production were met), after which such rights were to vest in the United States. The ten-year period expired without the conditions for extension being met. The claim sustained below is that an intervening statute of Louisiana (Act 315 of 1940), passed after the United States acquired the land in question and providing that mineral rights reserved in land conveyances to the United States shall be "imprescriptible," had the effect of extending indefinitely the former owners' mineral reservations.

The questions presented are whether the Louisiana statute is applicable to these particular land acquisitions, and, if so, whether it can constitutionally be applied to defeat the government's valuable right to the minerals. More specifically, the issues are:

1. Whether the reservations of mineral rights in question are within the provisions of Louisiana Act 315, as construed under state law.

2. Whether application of Louisiana Act 315 to these mineral interests of the United States violates the Supremacy Clause, the Property Clause, the Contract Clause or the Fourteenth Amendment of the Federal Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

> Article I, Section 10, clause 1:
>
> No State shall * * * pass any * * * Law impairing the Obligation of Contracts * * *.
>
> Article IV, Section 3, clause 2:
>
> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.
>
> Article VI, clause 2:
>
> This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.
>
> Fourteenth Amendment, Section 1:
>
> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Act 315, Louisiana Statutes of 1940 (LSA–RS 9:5806) (Cum. Supp.) provides in pertinent part:

> A. When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies,

> from any person, firm or corporation, and by the act of acquisition, order or judgment, oil, gas or other minerals or royalties are reserved, * * * the rights so reserved * * * shall be imprescriptible.
>
> * * * * *

The pertinent provisions of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222, as amended, 16 U.S.C. 715, *et seq.*), and of Act No. 12, Louisiana Statutes of 1892, are set forth in an Appendix hereto, at pp. 29–33, *infra.*

STATEMENT

The United States initiated this litigation in the United States District Court for the Western District of Louisiana to quiet title in it to lands in Louisiana which it had acquired by deed and by condemnation, pursuant to the Migratory Bird Conservation Act, for the Lacassine Wildlife Refuge.[1] The conveyances to the federal government reserved the mineral rights to the former owners. By their terms, the reservations subsequently expired and the mineral rights vested in the United States. The former owners or their successors in interest (collectively referred to herein as Lake Misere) claimed that Louisiana Act 315, enacted after the land involved here had been acquired by the United States, made inoperative the extinguishment provisions of the mineral reservations and they therefore owned the mineral rights. The district court con-

[1] The United States brought two separate suits for this purpose, under 28 U.S.C. 1345, which were consolidated pursuant to Rule 42(a), Fed.R.Civ.P. See the printed appendix in this Court ("App.") at pp. 22–27.

cluded (Pet. App. A) that the issues involved had been resolved in favor of Lake Misere's claim in *Leiter Minerals, Inc.* v. *United States,* 329 F. 2d 85 (C.A. 5), certiorari granted and judgment vacated with directions to dismiss as moot, 381 U.S. 413. Accordingly, it granted summary judgment for Lake Misere. The court of appeals affirmed *per curiam* (Pet. App. B) on the authority of its *Leiter Minerals* decision.[2]

1. *The present case.* The material facts were stipulated in the district court.[3] The United States, pursuant to its authority under the Migratory Bird Conservation Act, 16 U.S.C. 715 *et seq.,* acquired approximately 12,625 acres of land in Cameron Parish, Louisiana, by purchase on July 23, 1937, and by a condemnation judgment entered on January 25, 1939. This land forms a part of the Lacassine Wildlife Refuge under the jurisdiction of the Department of the Interior. The deed of purchase reserved "unto [the] vendor * * * all the oil, gas, sulpher and other minerals in, on or under said land, * * * for a term of ten (10) years from the date [hereof] * * * and as long thereafter as * * * mineral is produced from said land, or so long thereafter as [vendor] shall conduct drilling or reworking operations * * *" (App.

[2] The present case involves the issues that were left open by this Court when *Leiter Minerals* became moot. Since the decisions below were based on the court of appeals' decision in *Leiter Minerals*, that litigation is discussed in some detail at pp. 7–10, *infra*, and the court of appeals' opinion in that case (329 F. 2d 85) is set forth at Pet. App. D.

[3] The stipulation is appended to the district court's opinion (Pet. App. A, pp. 7a–14a). See also App. 22–27.

23). It further provided that "at the end of said ten-year period of reservation, if not extended * * *," the mineral reservation "shall terminate * * *, and the complete fee title to said lands shall thereby become vested in the United States" (*ibid.*). The judgment of condemnation contained a mineral reservation in favor of the prior owners which was identical in relevant part (App. 25).

None of the conditions that would extend the term of the reservations occurred during the ten-year period (App. 24, 26). In 1955, after the mineral rights had vested in the United States under the terms of the reservations, the United States issued oil and gas leases covering the lands in question. Lake Misere continued to claim the mineral rights, however, and executed various contracts in which it asserted that it owned such rights (App. 24, 26–27).

The district court concluded that the respective provisions of the reservations suggested that "the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitudes." It therefore held that it was "obligated to follow" the court of appeals' decision in *Leiter Minerals* since that decision was entitled to "stare decisis effect" despite the fact that the Supreme Court had vacated the judgment (Pet. App. A, pp. 6a–7a). Since the court of appeals in *Leiter Minerals* had determined that Louisiana Act 315 made prior contractual prescriptions ineffectual to extinguish a mineral res-

ervation, the district court sustained Lake Misere's claim and granted its motion for summary judgment.[4]

The court of appeals affirmed the district court's judgment "on the basis of the principles enunciated * * * in *Leiter*" (Pet. App. B, p. 17a). It rejected the government's constitutional contentions (*id. at* pp. 17a–18a).

2. *Leiter Minerals.* The relevant facts in the present case closely parallel those in *Leiter Minerals,* and the legal issues presented there were essentially the same as those involved here.

In 1938, the United States purchased certain lands in Plaquemines Parish, Louisiana, for a wildlife refuge under the provisions of the Migratory Bird Conservation Act. The deed of purchase contained a mineral reservation similar to the reservations in the present case, and, as here, the reservation expired according to its terms and the mineral rights vested in the United States.[5] Both the United States and the

[4] The government challenged the constitutionality of the statute in the district court on the several grounds asserted here (see Pet. App. A, p. 4a), but that court did not comment on the constitutional questions (*id.* at pp. 6a–7a).

[5] The *Leiter Minerals* reservation was also for a ten-year period. If mineral operations took place for "an average of at least 50 days per year" during the final three years of the specified term, the servitude would be extended for an additional five-year period, but only with respect "to an area of twenty-five acres of land" around each well or mine producing or being drilled at the "time of first extension." Additional five-year extensions could be obtained "from time to time" to permit completion of active drilling operations (329 F. 2d at 87).

former owner (Leiter) issued oil and gas leases covering the acquired lands.

The Leiter interests, claiming that they owned the mineral rights, brought suit in a Louisiana state court against the government's lessees. The claim was based on the provision of Louisiana Act 315 stating that "[w]hen land is acquired * * * by the United States * * * [and] minerals or royalties are reserved * * * the rights so reserved * * * shall be imprescriptible"; this language, it was contended, had the effect of extending Leiter's mineral reservation in perpetuity. The United States then instituted an action in federal court to quiet title. The federal district court, at the government's request, enjoined the state court proceedings (204 F. Supp. 560 (E.D. La.)), and the court of appeals affirmed the injunction (224 F. 2d 381 (C.A. 5)). This Court granted certiorari; it modified the injunction "to permit an interpretation of the state statute [Louisiana Act 315] to be sought * * * in the state court," and, with that change, affirmed (352 U.S. 220, 230).

A declaratory judgment proceeding was then initiated in state court to obtain a construction of Act 315, and the case ultimately reached the Supreme Court of Louisiana (*Leiter Minerals, Inc.* v. *California Co.*, 241 La. 915, 132 So. 2d 845). That court held that Louisiana Act 315 applies retroactively to mineral reservations outstanding when the statute was

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As in the present case, if none of the conditions specified in the deed occurred during the ten-year period, the reservation terminated "and complete fee in the land [became] vested in the United States" (*ibid.*).

enacted in 1940, although they were created before that date, and applies "to prescription whether established by statute or by contract" (241 La. at 940, 132 So. 2d at 854). The statute controls, however, only with respect to reservations establishing a mineral servitude "of uncertain and indefinite duration"; if the servitude is "for a certain time or of specified duration * * * then Act 315 of 1940 is not applicable * * *" (241 La. at 938, 935, 132 So. 2d at 853, 852). The court summarized its view of the Act as follows (241 La. at 942–943, 132 So. 2d at 854–855):

> First, that if the reservation in the Leiter deed is construed as establishing a mineral servitude for a definite, fixed, and specified time which has elapsed, then Act 315 of 1940 is not applicable and cannot be constitutionally applied; and second, that if the reservation is construed as [1] not establishing a servitude for a fixed, definite and certain time, and if it is decided [2] that the provisions of the reservation show that the parties were stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created, then Act 315 of 1940 is applicable and constitutional. The interpretation of the contract [the reservation] is for the United States courts.

The federal district court then decided the merits of the government's quiet title action (204 F. Supp. 560). It held that the reservation "provides a definite term" for the mineral servitude created thereby (*id.* at 567). Thus, "[u]nder the ruling of the Louisiana Supreme Court, * * * the reservation was not af-

fected by Act 315 of 1940," and "the servitude expired by its own terms and the mineral rights reverted to the United States" (*ibid.*). It was, accordingly, unnecessary for the court to resolve the government's contentions regarding the constitutionality of Act 315.

A divided court of appeals reversed (329 F. 2d 85). The majority rejected the argument that federal law controlled the rights of the United States under the reservation, and held, instead, that those rights were to be determined by reference to the law of Louisiana. In its view, the Louisiana Supreme Court had indicated that "Leiter's servitude was one of indefinite duration," and it agreed with that interpretation (Pet. App. D, p. 29a). Accordingly, the majority of the court concluded that, under state law, the reservation "provide[d] for a contractual prescription for the conditional extinguishment of the mineral servitude which was rendered inoperative by the Louisiana statutes" (*id.* at p. 35a). As to the government's contention that such an application of the Louisiana statute unconstitutionally impaired its contract, the majority stated that the discussion of the matter in its prior decision in *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003, and in the Louisiana Supreme Court's *Leiter* opinion (241 La. at 941–942, 132 So. 2d at 854) made it "unnecessary further to labor" the point. Judge Gewin, dissenting, stated that he agreed with the district court; he would have affirmed on the ground that "[t]he reservation * * * was for a definite, fixed and specified time * * *" (*id.* at 37a).

ARGUMENT

INTRODUCTION AND SUMMARY

In holding that Louisiana Act 315 can be applied to the Lake Misere conveyances to abrogate rights acquired by the United States under the express terms of the mineral reservations, the court below improperly looked to state rather than federal law. While we contend that the government's rights under the mineral reservations involved here are exclusively a matter of federal law (see pp. 19–23, *infra*), we additionally urge that the court of appeals erred even on its own terms, by extending the reach of the state statute beyond the limits set by the Louisiana Supreme Court in *Leiter Minerals*. Although the construction of the 1940 statute by the highest state court is, of course, a determination of an issue of state law that is binding on the federal courts, the application of the "imprescriptible" provision (as so construed) to these particular mineral interests is a matter to be resolved by the federal courts in which the litigation has been brought. *Leiter Minerals* v. *California Co., supra,* 241 La. at 943, 132 So. 2d at 855.

Consideration of this threshold question of the statute's applicability in the present context is the logical starting point of our discussion, since the serious constitutional issues presented by the decision below need not be reached by this Court if it agrees with us that under state law Louisiana Act 315 is inapplicable to these facts. Our position on this point, as we explain below, is that the mineral reservations provided for in the deed of purchase and the

condemnation judgment did not by their terms create a period of "contractual prescription" of indefinite duration, but established, instead, a mineral servitude for a specified time. Accordingly, even if state law is controlling in this context—which we dispute—the court below erred in holding that the mineral interests reserved to the former owners in these conveyances could properly be extended perpetually by the 1940 statute.

This error, moreover, renders the Louisiana Act unconstitutional as applied. The decision below essentially permits each State, in the absence of an explicit congressional declaration to the contrary in the enabling legislation, to impose restrictions, including retroactive restrictions, on the manner and extent of land acquisitions by the national government. As we shall explain, such a result offends the Property and Supremacy Clauses of the Constitution by subjecting the interests of the United States in land to disposition by a State and to the idiosyncracies of local land law. In addition, an application of Louisiana Act 315 to these mineral interests violates the constitutional bar against impairment of contractual obligations in Article I, Sec. 10, by permitting the total abrogation of valuable rights previously acquired by the United States through contractual stipulation. And, finally, the statute is contrary to the equal protection concept in the Fourteenth Amendment, since it singles out the United States for hostile discrimination in the acquisition of interests in land.

In these several respects, as we elaborate below, the decision of the court of appeals is contrary to settled

principles of federal land law and of constitutional law, and it should not be permitted to stand.

I

THE MINERAL RESERVATIONS INVOLVED HERE ARE NOT COVERED BY LOUISIANA ACT 315 AS THAT STATUTE HAS BEEN CONSTRUED BY THE HIGHEST STATE COURT

Both the deed of purchase and the condemnation judgment in this case included reservations providing for a mineral servitude in favor of the former owners of the lands acquired by the United States. This servitude gave the sellers "a right to go upon the land and produce the minerals" (*Leiter Minerals, Inc.* v. *California Co., supra,* 241 La. at 931, 132 So. 2d at 850). As pointed out by the district court in *Leiter Minerals* (204 F. Supp. at 564; footnote omitted), "with respect to duration, there are two kinds of mineral servitudes: perpetual servitudes which prescription [for non-usage] alone will curtail, and servitudes for a term which end at the expiration of the time stipulated."[6]

[6] In Louisiana, there can be no separate estate in minerals apart from ownership of the surface. See *United States* v. *Nebo Oil Co., supra,* 190 F. 2d at 1007. The most that may be granted (or reserved) is a right to explore for and extract minerals, and that right expires automatically by the force of "prescription" if not exercised for 10 years. Under Louisiana law, private parties cannot validly stipulate that a mineral interest shall survive more than a decade of inactivity. See *United States* v. *Leiter Minerals, Inc., supra,* 204 F. Supp. at 564. The effect of Act 315 is to suspend the operation of the law of prescription when the landowner sells to the United States and reserves mineral rights; his right to extract the minerals is made "imprescriptible."

If, as the court of appeals held, Louisiana Act 315 controls the disposition of the government's present quiet title action—a point which we dispute *infra*, at pp. 19–23—the critical determination here is whether these mineral reservations contemplate perpetual or term servitudes. For the Louisiana Supreme Court has, as we earlier stated (p. 9, *supra*), construed the 1940 statute as applying the concept of imprescriptibility to perpetual servitudes only (*i.e.*, those of indefinite or uncertain length), holding that the Act does not affect the duration of servitudes for a specified term.

We submit that these reservations come within the latter category. By their terms, the servitudes were to "remain in force for a term of ten (10) years from the date of vesting of title in the United States * * *" (App. 23; and see App. 25). Nothing that the parties did, or failed to do, during that period (other than agreeing on a superseding arrangement) could extinguish the sellers' interests, by contractual prescription or otherwise. It is true, as the courts below emphasized, that the conveyances also provided for an indefinite extension, or renewal, of the servitudes if, at the end of the stipulated ten-year term, minerals were being produced or drilling operations were then in progress. To that limited extent perhaps it can be said that the reservations provided "for a period of contractual prescription for the conditional extinguishment of the mineral servitudes" (Pet. App. A, p. 6a; Pet. App. B, p. 17a). But the essential point in this regard is that this so-called "period of con-

tractual prescription" would begin to run only *after* the mineral servitudes for a term of ten years had ended, and, even then, only in the event that certain conditions existed as specified in the agreement.

This, we submit, is not the type of reservation that Louisiana Act 315 was intended to reach. As construed by the Louisiana Supreme Court, the statute purports to make "imprescriptible" only those reservations satisfying two distinct requirements: *viz.*, "*not* establishing a servitude for a fixed, definite and certain time, *and* * * * stipulating for a period of contractual prescription for the conditional extinguishment of the mineral servitude created * * *" (241 La. at 942; 132 So. 2d at 854–855; emphasis supplied). Here, however, the servitude was "fixed" and "definite." Thus, the parties' stipulation here "for a period of contractual prescription" with respect to any *renewal* of the servitude, after expiration of the stipulated ten-year term, meets, at best, only half of the two-pronged test announced by the state court. In these circumstances, we submit, the Act is not applicable.

Nor need we be concerned in this case with the separate question of the Act's applicability had the mineral servitude in fact been renewed; it is undisputed that no efforts were made to extract or produce the minerals during the specified term (App. 24, 26). The reservations thus terminated by their own terms at the end of the ten-year period. This is what the parties bargained for; since they did not contemplate a servitude of indefinite duration subject to a period

of contractual prescription (except in the unlikely event of a conditional renewal), the court below improperly held the already defunct servitudes to be "imprescriptible" under Louisiana Act 315.

Moreover, as we shall now show, application of the 1940 statute to these mineral reservations is constitutionally invalid on several grounds.

II

APPLICATION OF LOUISIANA ACT 315 TO THESE MINERAL RESERVATIONS VIOLATES THE PROPERTY, SUPREMACY AND CONTRACT CLAUSES OF THE FEDERAL CONSTITUTION AND IMPERMISSIBLY SINGLES OUT THE UNITED STATES FOR HOSTILE DISCRIMINATION IN THE ACQUISITION OF INTERESTS IN LAND

The Property Clause vests in Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *." Article IV, Sec. 3, cl. 2. The Supremacy Clause prescribes that the Constitution, laws and treaties of the United States "shall be the supreme Law of the Land * * *." Article VI, cl. 2. The Contract Clause specifies that no State shall pass any law "impairing the Obligation of Contracts." Article I, Sec. 10, cl. 1. Each of these constitutional provisions, as well as the Fourteenth Amendment's equal protection clause, precludes an application of Louisiana Act 315 in this case to limit or change the rights of the United States in lands that had been acquired by it before enactment of the 1940 statute.

A. *The Property Clause.*—The United States acquired the lands in issue here pursuant to the Migra-

tory Bird Conservation Act (*infra*, pp. 29–33), legislation enacted by Congress in 1929 in furtherance of a national program for the protection of wildlife. From the beginning, that Act contemplated acquisitions that would include reservations and other encumbrances in favor of the former owners, and, indeed, in 1935, the statute was amended to make it clear that reservations could be set forth in the conveyance. See H. Rep. No. 886, 74th Cong., 1st Sess., p. 2 (1935); and see Secs. 715d–1 and 715e of the Act, pp. 30–31, *infra*. But Congress also provided that the federal acquisition "shall in no case be defeated because of rights-of-way, easements, and reservations," and that such encumbrances "shall be subject to rules and regulations prescribed by the Secretary of the Interior * * *" (Sec. 715e, pp. 30–31, *infra*). While the United States could not under the Act acquire land for game-refuge purposes "unless the State in which the area lies shall have [first] consented by law * * *" (Sec. 715f, p. 31, *infra*), Louisiana had given its general consent to such federal acquisitions in 1892 (Act. No. 12, Louisiana Statutes of 1892, *infra*, p. 33).

There is no dispute that the conveyances to the government in this case, which contained carefully worded mineral reservations specifying, *inter alia*, the circumstances in which the mineral rights would vest in the United States, were proper in all respects and furthered a legitimate public interest. At the time, then, of these acquisitions—by the deed of purchase of 1937 and by the condemnation judgment in 1939—the lands became part of the federal domain, and thereby subject to the plenary and exclusive

control of Congress under the Property Clause. See *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 294–295; *Alabama* v. *Texas*, 347 U.S. 272, 273–274; *United States* v. *San Francisco*, 310 U.S. 16, 29–30; *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 404–405. Thereafter, only the federal government could make rules and regulations with respect to the acquired lands, and state law could not infringe on that power. *United States* v. *Allegheny County*, 322 U.S. 174, 182–183.

This is especially so here, since unlike the situation in *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003 (C.A. 5), on which the court of appeals mistakenly relies, the parties to these conveyances did not stipulate to condition the government's "reversionary interest" in the mineral rights on the operation of the Louisiana ten-year prescription statute. Rather, it was bottomed squarely on the express terms of the deed of purchase and the condemnation judgment. Compare *Green Bay Canal Co.* v. *Patten Paper Co.*, 172 U.S. 58, 79–81; and see generally *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 331–336. No provision was made therein for delays and detours—let alone defeats—that the State might impose by changes in the state law of prescription.[7] To the contrary, the clear understanding was, as is re-

[7] In *Nebo*, by contrast, the court of appeals concluded that the government's "so-called 'reversionary interest' is nothing more than a mere expectancy, or hope, based upon an anticipated continuance without change of the applicable laws of prescription * * *" (190 F. 2d at 1009). And see our discussion of *Nebo*, *infra*, at pp. 24–25.

flected in the Migratory Bird Conservation Act itself (see pp. 20–21, *infra*), that the mineral reservations included in these conveyances to accommodate the interests of both buyer and seller (see n. 8, *infra*) were to be controlled and regulated by the federal government, and could not be altered by the State or the former owners to defeat the property interest that the government had bought, and had bargained for and secured by private agreement.

The court below, however, held that a state statute enacted several years subsequent to the conveyances to the United States governs the federal government's property rights. Its application of Louisiana Act 315 to these land transactions has the effect of reducing the property interests that the government received under the conveyances by abrogating the agreed terms of the reservations. This, we submit, plainly constitutes a disposition of federal property by the State—a result squarely in conflict with the Property Clause, which confers on Congress, rather than the States, the "Power to dispose of * * * the Territory or other Property belonging to the United States."

B. *The Supremacy Clause.*—In addition, the decision below that the Louisiana statute applies here to make the Lake Misere reservations "imprescriptible" cannot be reconciled with the federal statutory scheme under which the government acquired these lands.

As we have indicated, reservations like those involved here are authorized by the Migratory Bird Conservation Act, but that statute explicitly provides that such reservations "shall be subject to the rules and

regulations prescribed by the Secretary of the Interior" (Sec. 715e, p. 31, *infra*). Furthermore, the reservations "shall be subordinate to and subject to such rules and regulations as are set out in [the conveyances] * * * or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time" (*ibid.*).

Thus, the plan of the Migratory Bird Conservation Act is to insulate the federal interests acquired thereunder from subjection to the peculiarities of local land law. The statutory scheme leaves no room for state regulation of game-refuge acquisitions. On the contrary, the Act's premise is that the administrators of the federal program shall have full power to acquire the land interests they need while reserving to the former owners thereof whatever access to, or use of, the acquired property that may be deemed expedient and compatible.[8] Congress plainly intended

[8] Placing the responsibility in the Secretary of the Interior to determine whether to use reservations and, if so, what they should provide, gives federal authorities the flexibility needed to assure that land requirements for projects can be met. This may mean, as in the present case, that the government must settle for only the surface rights temporarily, with the mineral rights reserved to the former owner for a specified term. This form of reservation accommodates the interests of both seller and buyer. The former often wants an opportunity to explore for minerals, while the latter may be willing to forego the mineral rights for a specified time to reduce purchase costs. The United States uses a similar provision fixing a cut-off date for the period in which lessees of federal lands can explore for minerals (see the Mineral Leasing Act of 1920, 41 Stat. 443, as amended, 30 U.S.C. 226). The restrictions which the reservations impose on the rights of the former owners to extract minerals are all the more important in this case. The lands

that if reservations were included in the conveyances to the United States, they should have federally-defined consequences without regard to the vagaries of state law.[9]

The Supremacy Clause thus forbids the application of the Louisiana prescription statute in these circumstances. See *Ivanhoe Irrigation District* v. *McCracken, supra,* 357 U.S. at 295; *California Commission* v. *United States,* 355 U.S. 534, 544; *United States* v. *Allegheny County, supra,* 322 U.S. at 182–183; and cf. *Paul* v. *United States,* 371 U.S. 245. As this Court stated in *Ivanhoe* (357 U.S. at 295), "a State cannot compel use of federal property on terms other than those prescribed or authorized by Congress." Here, the United States, "exercising its constitutional func-

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were acquired for, and are being used as, a game refuge, and, unless carefully regulated, mineral development might well pose grave threats to this use. Compare 43 C.F.R. (April 1, 1964 Supp.) 3120.3–3, under which the leasing of refuge lands is generally barred. It is thus important to implementation of the policy objectives of the Migratory Bird Conservation Act that mineral reservations in government acquisitions of lands for wildlife refuges be limited to their express terms, rather than expanded, as under the decision below, by state statute.

[9] Section 715f of the Act (p. 31, *infra*), specifying that the States must give their consent by law before the United States can make acquisitions, does not indicate an intention to subject the acquisitions to the peculiarities of local land law. As already pointed out (*supra*, p. 17), Louisiana has consented to federal acquisitions. Having done so, the State has no further control over the acquisitions made under the authority of federal law. See, *e.g.*, the district court's first opinion in *United States* v. *Nebo Oil Co.*, 90 F. Supp. 73, 89–92 (W.D. La.), reviewing the long-standing position of federal officials that state law no longer applies to lands acquired by the federal government for forest purposes.

tions," acquired the lands in question in accordance with federal statutes empowering it to do so; hence "[t]he validity and construction of [its] contracts"—in this case the conveyances containing the reservations—and "their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any State." *United States* v. *Allegheny County, supra,* 322 U.S. at 183; see also *Ivanhoe Irrigation District* v. *McCracken, supra,* 357 U.S. at 289. The decision below that state law controls in this case is contrary to these well-settled principles.[10]

This is especially so as regards lands which the United States acquired by condemnation. "Condemnation involves essential governmental functions. * * * [W]here essential interests of the Federal Government are concerned, federal law rules unless Congress chooses to make State laws applicable." *United States* v. *93.970 Acres,* 360 U.S. 328, 332–333. Simi-

[10] The court of appeals based its conclusion on the proposition expressed in *Leiter Minerals* (329 F. 2d at 90) that "State law must govern in the absence of a federal statute making federal law applicable." Under this reasoning, unless Congress explicitly provides otherwise, each State is presumably free not only to impose restrictions on the manner and extent of land acquisitions the national government can make, but also to reduce the federal government's interest in property already acquired by altering local land laws. In addition to its inconsistency with the Property Clause (see pp. 16–19, *supra*), this view denies proper scope to legislation authorizing federal projects, such as the Migratory Bird Conservation Act, and, because of the wide disparity in local laws, would create serious practical problems in the implementation of numerous federal programs.

larly, the estates and interests created by declarations of taking are to be determined by federal law. See, *e.g., United States* v. *Pinson,* 331 F. 2d 759 (C.A. 5); *Bumpus* v. *United States,* 325 F. 2d 264 (C.A. 10); *United States* v. *Certain Interests in Property, Etc.,* 271 F. 2d 379 (C.A. 7). Since Congress has not made state law applicable here, there is no basis for depending on state law to define, or for permitting a State to change, the government's interest in the land it has acquired.

C. *The Contract Clause.*—The subordination of the federal acquisitions to state law in this case also violates Article I, Sec. 10, cl. 1, of the Constitution. Louisiana Act 315, as applied below, abrogates the express terms in the conveyances for extinguishment of the mineral reservations, and thus clearly impairs the obligation of the government's contracts.

The deed of purchase and the condemnation judgment in this case are unambiguous: the former owner retained a right to explore for and extract the minerals, and that right would expire in ten years unless certain requirements had been met to extend the term. Those requirements were not met, and under the terms of the conveyances the mineral rights which the former owners had reserved "terminate[d]" and "the complete fee title to said lands * * * [did] thereby become vested in the United States" (*supra,* p. 6).[11]

[11] Thus, here, as in *Leiter Minerals,* the government's property interest in the mineral rights flows directly from the conveyances, in contrast to the situation in the court of appeals' earlier decision in *Nebo Oil,* on which that court mistakenly relied in its opinion in *Leiter Minerals* (see *supra,* p. 18).

The property interest thus provided in favor of the United States conferred a double benefit. Not only would the right to minerals fully vest in the government if the former owners did not satisfy the conditions set; equally important, the United States would then be secure against any disturbance in its exclusive possession of these lands for use as a game refuge. The United States bargained for this future interest in the minerals; it was clearly agreed to in the conveyances and thus reflected in the consideration paid by the United States to the former owners. Yet the court of appeals ruled here, as in *Leiter Minerals,* that the subsequently-enacted Louisiana statute effectively erased this provision by rendering it inoperative. That result, we submit, is in direct conflict with the constitutional guarantee in the Contract Clause against impairment of contractual obligations. See *W. B. Worthern Co.* v. *Thomas,* 292 U.S. 426; *Pennsylvania Coal Co.* v. *Mahon,* 260 U.S. 393; *Barnitz* v. *Beverly,* 163 U.S. 118. Compare *El Paso* v. *Simmons,* 379 U.S. 497; *Home Building & Loan Association* v. *Blaisdell,* 290 U.S. 398.

Nor do we think that its previous decision in *United States* v. *Nebo Oil Co., supra,* cited by the court below, is authority to the contrary. That case involved an acquisition by the United States of lands in Louisiana for use as a forest reserve; the deed conveyed to the United States only the surface rights, subject to a prior disposition among third parties of all mineral rights. The question there was whether the government acquired the mineral rights, not by virtue of any

stipulation in its contract, but by operation of the Louisiana ten-year prescription statute. The court held (190 F. 2d at 1010) that the government's "hope" of acquiring title to the mineral rights under the law of prescription was a mere "expectation of servitude lapsed for nonuser"—not a contract right—which could be modified at the will of the State. Accordingly, there, Act 315 of 1940 was held effective to bar a prescriptive transfer of the mineral rights to the United States.[12] The situation here is fundamentally different. In the present case, the government's right—whether or not characterized as "contractual prescription"—is derived solely from the express provisions agreed to in the deed of purchase and the condemnation judgment; it depends in no degree upon the law of Louisiana. It is a property right of very substantial value, which was bargained for, reflected in the consideration paid, and specified in private contracts. Cf. *Hickman* v. *United States,* 135 F. Supp. 919 (W.D. La.), opinion on rehearing, 140 F. Supp. 759. Impairment of that right by a change in local law occurring after the

[12] The court pointed out that, there, application of Act 315 of 1940 *enforced*, rather than impaired, the express terms of the government's contract:

"All that Bodcaw [the government's grantor] had which it could sell to the United States was the timber land itself [the surface rights]. That was the obligation of the contract and it remains unimpaired [190 F. 2d at 1010]."

The district court emphasized the same point:

"Under such circumstances, it is impossible to contend that Act No. 315 of 1940 impairs the obligations of contract. On the contrary, it enforces the contractual obligations of the parties as they understood them at the time the sales were made [90 F. Supp. at 92]."

acquisition had been completed is constitutionally impermissible.

D. *The Fourteenth Amendment.*—The final reason why the application here of Louisiana Act 315 is unconstitutional is that it singles out the United States and its lessees for hostile discrimination in the acquisition of interests in land. Although others acquiring land can specify and pay for a period of contractual prescription for mineral reservations, the United States cannot. As pointed out by the federal district court in *Leiter Minerals* (204 F. Supp. at 563), "this discrimination directed against the federal government and its lessees" raises a substantial question under the equal protection clause of the Fourteenth Amendment.

There is no rational basis for this discriminatory treatment of federal land acquisitions under Act 315. The Louisiana Supreme Court in its *Leiter Minerals* decision (241 La. at 932–934, 132 So. 2d at 851–852) explained that the purposes of the Act were (1) to eliminate difficulties which the federal government had encountered in acquiring lands by permitting its grantors to reserve the minerals without application of the state prescription statute, and (2) to retain state control over the minerals so that the State could tax and apply its conservation measures to them. But the statute, because it has been construed by the highest state court to apply to some *contractual* provisions limiting the duration of mineral interests, goes too far as concerns the first matter; while it frees the United States and its grantors from statutory prescription, it also bars prescription by contract. There is no reason

why the United States, and those with whom it deals, should not be allowed to contract for prescription if they wish, like any other vendee and vendor. Nor does the Act really serve the other suggested objects—revenue and conservation. The United States is not prohibited from acquiring mineral rights, but instead only from acquiring them under a contract which gives the former owner a temporary period for exploration and production—a type of contract designed to encourage exploration of the minerals by the former owner, who would be liable to taxation and state conservation regulations.[13]

While there have been no federal appellate decisions holding that the United States is a "person" entitled to the protections of the Fourteenth Amendment, this may well be due to the fact that the same protection that the Fourteenth Amendment guarantees is ordinarily provided in the overriding principles of Federal-State relationships. See *McCulloch* v. *Maryland*, 4 Wheat. 316, 436.[14] At all events, even if it is "somewhat dubious" that the United States is a "person" in this context (see *United States* v. *Burnison*, 339 U.S.

[13] The fact that mineral reservations in conveyances to agencies of the state government are also made imprescriptible (Act 278, Louisiana Statutes of 1958 (LSA–RS 9: 5806B) (Cum. Supp.)) does not, we submit, support the "classification" of the United States under Act 315. While the State may be entitled to "discriminate" against itself in legislating with respect to its own agencies, that should not mean that it has the right to discriminate in applying legislation to others.

[14] See also *California Commission* v. *United States*, 355 U.S. 534; and cf. United States v. Georgia Public Service Commission, 371 U.S. 285, 293; Mayo v. United States, 319 U.S. 441, 445.

87, 95),[15] it is well settled that a State cannot, consistent with the equal protection concept, discriminate against federal interests (including federal lessees). See, *e.g.*, *Moses Lake Homes* v. *Grant County,* 365 U.S. 744. Cf. *Testa* v. *Katt,* 330 U.S. 386. Yet that is precisely what the decision below allows the State of Louisiana to do by upholding the application of Act 315 to the land acquisitions here.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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[15] The district court in *United States* v. *Nebo Oil Co.*, *supra*, 90 F. Supp. at 95, held that the United States is not a "person" within the meaning of the Fourteenth Amendment. Dicta to the same effect appear in *United States* v. *City of Jackson, Mississippi*, 318 F.2d 1, 7 (C.A. 5), and in *United States* v. *Biloxi Municipal School District*, 219 F. Supp. 691 (S.D. Miss.), affirmed, 326 F.2d 237 (C.A. 5). Apparently to the countrary is *United States* v. *Standard Oil Co. of California*, 21 F. Supp. 645, 659 (S.D. Cal.), affirmed, 107 F.2d 402, 417–419 (C.A. 9).

APPENDIX

Additional Statutes Involved

Migratory Bird Conservation Act of February 18, 1929, 45 Stat. 1222, 16 U.S.C. (1964 ed.) 715, *et seq.*:

> § 715a. A commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of the Interior, as chairman, the Secretary of Commerce, the Secretary of Agriculture and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of the Interior for purchase or rental under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. * * *
>
> § 715c. The Secretary of the Interior shall recommend no area for purchase or rental under the terms of section 715–715d, 715e, 715f–715k, and 715*l*–715r of this title except such as he shall determine is necessary for the conservation of migratory game birds.
>
> § 715d. The Secretary of the Interior is authorized to purchase or rent such areas as have been approved for purchase or rental by the commission, at the price or prices fixed by said commission, and to acquire by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be

suitable for such purposes, and to pay the purchase or rental price and expenses incident to the location, examination, and survey of such areas and the acquisition of title thereto, including options when deemed necessary by the Secretary of the Interior from moneys to be appropriated hereunder by Congress from time to time * * *.

§ 715d–1. When the public interests will be benefited thereby the Secretary of the Interior is authorized, in his discretion, to accept on behalf of the United States title to any land which he deems chiefly valuable for wildlife refuges, and in exchange therefor to convey by deed on behalf of the United States an equal value of lands acquired by him for like purposes, or he may authorize the grantor to cut and remove from such lands an equal value of timber, hay, or other products, or to otherwise use said lands, when compatible with the protection of the wildlife thereon, the values in each case to be determined by said Secretary. Timber or other products so granted shall be cut and removed, and other uses exercised, under the laws and regulations applicable to such refuges and under the direction of the Secretary of the Interior and under such supervision and restrictions as he may prescribe. * * *

§ 715e. The Secretary of the Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under sections 715–715d, 715e, 715f–715k, and 715l–715r of this title, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of the Interior in no manner interfere with the use of the areas so encum-

bered for the purposes of said sections, but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under said sections or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of the Interior for the occupation, use, operation, protection, and administration of such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time.

§ 715f. No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under sections 715–715d, 175e, 715f–715k, and 715*l*–715r of this title unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State.

§ 715g. The jurisdiction of the State, both civil and criminal, over persons upon areas acquired under sections 715–715d, 715e, 715f–715k and 715*l*–715r of this title shall not be affected or changed by reason of their acquisition and administration by the United States as migratory-bird reservations, except so far as the punishment of offenses against the United States is concerned.

§ 715i. No person shall knowingly disturb, injure, or destroy any notice, signboard, fence, building, ditch, dam, dike embankment, flume, spillway, or other improvement or property of the United States on any area acquired under sections 715–715d, 715e, 715f–715k, and 715*l*–

715r of this title, or cut, burn, or destroy any timber, grass, or other natural growth, on said area or on any area of the United States which heretofore has been or which hereafter may be set apart or reserved for the use of the Department of the Interior as a game refuge or as a preserve or reservation and breeding ground for native birds, under any law, proclamation, or Executive order, or occupy or use any part thereof, or enter thereon for any purpose, except in accordance with regulations of the Secretary of the Interior * * *.

§ 715k. For the acquisition, including the location, examination, and survey, of suitable areas of land, water, or land and water, for use as migratory bird reservations, and necessary expenses incident thereto, and for the administration, maintenance, and developmet of such areas and other preserves, reservations, or breeding grounds frequently by migratory game birds and under the administration of the Secretary of the Interior, including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimination of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authorities in wildlife conservation, for investigations and publications relating to North American birds, for personal services, printing, engraving, and issuance of circulars, posters, and other necessary matter and for the enforcement of the provisions of sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, there are authorized to be appropriated * * *.

§ 715s. (1958 ed.) Twenty-five per centum of all money received during each fiscal year from the sale or other deposition of surplus wildlife, or of timber, hay, grass, or other spontaneous

products of the soil, shell, sand, or gravel, and from other privileges on refuges established under sections 715–715d, 715e, 715f–715k, and 715*l*–715r of this title, * * * shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated * * *.

Act No. 12, Louisiana Statutes of 1892:

AN ACT

To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

Sec. 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal, or other taxation.

Approved June 20, 1892.

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